

G-011/M-90-508 ORDER REVISING FLEXIBLE RATE TARIFFS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Norma McKanna
Robert J. O'Keefe
Patrice M. Vick

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition from
Peoples Natural Gas Company to
Revise Its Flexible Gas Tariffs

ISSUE DATE: December 14, 1990

DOCKET NO. G-011/M-90-508

ORDER REVISING FLEXIBLE RATE
TARIFFS

PROCEDURAL HISTORY

In 1987 the Minnesota legislature enacted Minn. Stat. § 216B.163, a flexible rate statute for gas utilities. This law allowed gas utilities to offer flexible, discounted tariffs to customers subject to effective competition. Effective competition was defined as the capability of obtaining equivalent energy service from a nonregulated supplier.

In 1990 the flexible rate tariff was amended by the Minnesota legislature. The new version of the statute incorporated the following changes, among others:

1. The Commission must specify a maximum rate for any flexible tariff.
2. The Commission may specify the minimum term for which a customer must be on the tariff.
3. Eligibility restrictions were changed to disallow competition with district heating facilities as of June 1, 1987.

On July 12, 1990, Peoples Natural Gas Company (Peoples or the Company) responded to the statutory changes by petitioning for modifications to its flexible rate tariffs. The tariffs applied to its Supplemental Gas Supply Rate Schedule (Transportation Service) and its Flexible Rate Gas Service (Sales Service). Peoples requested that the Commission approve the following changes to its tariffs:

1. The maximum rate would be set at an amount equal to the jurisdictional standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate.

2. There would be a minimum term of 18 months to two years set for new contracts.
3. The default rate would be eliminated from the tariff.
4. The prohibition against using flexible tariffs to compete with other suppliers regulated by the Commission would be eliminated from the tariff.
5. There would be a limitation on competing with district heating sources. The following language would be added to the tariffs:

Flexible rate may not be used to compete with customers of district heating facilities as of June 1, 1987.
This exception expires July 1, 1992.

6. The charge to customers for switching from flexible to standard service would be eliminated.

Items five and six requested by the Company were simply restatements or clarifications of statutory provisions. Items one through four were requests for Commission approval of positions taken by the Company.

On September 18, 1990, the Department of Public Service (the Department) filed its Report of Investigation and Recommendation. In its filing the Department suggested further clarifying language to be added to the "Availability" section of the tariffs. The Department also stated that the format of the tariffs was vague and confusing. The Department recommended that the Company revise the general presentation of the tariffs.

On July 31, 1990, Land O'Lakes, Inc. submitted comments. The Residential Utilities Division of the Office of the Attorney General (RUD-OAG) submitted comments on October 2 and 12, 1990. The Minnesota Industrial Energy Group filed comments on November 5, 1990. Reply comments were submitted by the Company on October 1, 1990, and by the Department on October 5, 1990.

The Commission met to consider the matter on November 27, 1990.

FINDINGS AND CONCLUSIONS

Issues Before the Commission

The following issues were raised in the Company's petition or in the Department's Report of Investigation and Recommendation:

1. At what level should the maximum tariff rate be set?
2. What minimum term should be set for flexible rate contracts?

3. What default rate should be set for periods in which the utility and the customer have failed to negotiate a flexible rate?
4. Should the clarifying language proposed by the Department be added to the tariffs?
5. Should the provision prohibiting competition among suppliers regulated by the Commission be removed?
6. Should the general presentation of the Company's tariffs be modified?

The Maximum Rate

Positions of the Parties

The Department recommended that the Commission set the maximum rate for flexible tariffs at the standard rate as approved in the utility's most recent rate case. The Department argued that this rate would enable utilities to retain dual fuel customers who might otherwise leave the system by offering them flexible downward pricing. At the same time, according to the Department, this system would protect customers who seek alternative energy sources. Such customers would not be at the mercy of sudden price escalations for alternative fuels, because they could choose to pay the standard tariffed rate to Peoples. The Department was supported in its position by large energy users who submitted comments.

Peoples requested that the Commission set the maximum rate at an amount equal to the standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate. The Company argued that this method was most fair to all parties, because it would allow the level of risk to the customer to match the level of reward. The RUD-OAG supported this position in its comments.

Commission Action

The Commission agrees with the position advocated by Peoples and supported by the RUD-OAG. Allowing the maximum rate to flex above the standard rate to the same extent as it can flex below is fair to the parties involved. Under the method requested by Peoples, customers are sufficiently protected by the maximum rate "cap". Flex rate customers are thus not entirely subject to extreme price swings for alternative fuel. Any amount by which the flex rate may exceed the standard rate can be considered an appropriate "fee" the customers pay for the benefits of flexible pricing and protection against dramatic price increases.

Flexible rate customers are further protected against excessive cost by their option of choosing the standard rate over a flexible rate. The complaint process is also open to flexible rate customers who feel they have been treated unfairly.

If the maximum were set at the standard rate, flexible gas customers would receive the benefits of the flexible tariff without assuming any of the inherent risk. The Peoples method more closely follows the model of the open market place, in which competitive forces ensure that both risks and rewards are weighed when customers decide to enter the market.

Without the possibility of an upward flex, customers who do not qualify for flexible rates could shoulder an unjust portion of the utilities' fixed costs. Non-flex customers, usually small business and residential customers, would reap little benefit from the flexible rate tariffs. Nearly all benefits of the gas utility flexible rate statute would flow to the utilities and their large energy customers.

The Commission finds that setting the maximum flex rate above the standard rate by the same increment as the below-standard flex is fair to the utilities, the large customers, and to residential and small business customers. The Commission will set the maximum tariff rate in this manner.

Minimum Term for Contracts

Positions of the Parties

In its petition, Peoples requested a minimum term of 18 months to two years for new flexible rate contracts. The Department recommended the same term if the Peoples maximum rate method were adopted. The large energy users urged the Commission to require a 30 day minimum term for flexible rate contracts.

Commission Action

The Commission finds that a one year minimum term is the appropriate minimum for new flexible rate tariffs. A minimum term of 18 months to two years would place the customer at risk for high alternate fuel prices for an excessive length of time. A 30 day minimum term would in effect remove the possibility of an upward flex, since the customers would simply choose to revert to the standard tariff (and rate) in months when their alternate fuel price exceeded the standard rate. The Commission will require a one year minimum term for new flex contracts.

Default Rate

Positions of the Parties

In its September 18, 1990 Report and Recommendation, the Department advocated using the utility's maximum flexible rate as the default rate. Thus, if a utility and a flexible rate customer failed to agree during negotiations for a contract renewal, the flexible rate would be set at the maximum until the parties settled on a negotiated rate. The Department argued that this would give both parties to the contract negotiations an

incentive to agree on a rate. In times when alternative prices are lower than the maximum, utilities could risk losing customers and customers could risk locking into a rate that is higher than their alternative fuel price. When alternative prices are higher than the maximum, the contract rate and the default rate would usually both equal the maximum rate.

Peoples proposed that the default rate should be eliminated from the tariff.

Commission Action

The Commission agrees with the Department that the default rate should be set at the maximum flexible rate. Because the Commission has decided to adopt Peoples' plan for setting a maximum rate, the Commission finds that this is the proper formula for a default rate in the tariff.

Clarifying Language

Positions of the Parties

The Department recommended that the Commission require Peoples to include the following clarifying language in the "Availability" section of its tariff to comply with the statute:

Customers whose only alternative source of energy is gas from a supplier not regulated by the Commission and who must use Peoples' system to transport the gas cannot take service under flexible tariffs. However, customers who have or can reasonably acquire the capability to bypass Peoples' system are eligible to take service under flexible tariffs.

The Department also recommended that the Company include the following definition of effective competition in its tariff:

Effective competition means that a customer of a gas utility who either receives interruptible service or whose daily requirement exceeds 50,000 cubic feet maintains or plans on acquiring the capability to switch to the same, equivalent or substitutable energy supplies or service except indigenous biomass energy supplies composed of wood products, grain, biowaste, and cellulosic materials, at comparable prices from a supplier not regulated by the Commission.

This addition would restore the prohibition against competition from non-regulated suppliers.

Peoples did not object to either of these recommended insertions to its tariff.

Commission Action

The Commission agrees with the Department that the recommended clarifying language should be added to the Company's flexible rate tariffs.

Should the Presentation of the Company's Tariff be Modified?

Positions of the Parties

The Department stated that the format of the Company's tariff was vague and confusing. The Department recommended that the Commission require Peoples to modify the format of its tariff so that its terms are clear to all parties. Peoples had no objection to this requirement.

Commission Action

The Commission agrees with the Department that Peoples' tariff is poorly presented and confusing. The Commission will require the Company to submit an updated and improved version of the tariff within one year of the date of this Order.

ORDER

1. Peoples' July 12, 1990 petition for a revised tariff is hereby approved, with the following clarifications and modifications:
 - a. The maximum rate for the Peoples flexible rate tariffs shall be set at an amount equal to the standard rate plus the same margin by which the Company is allowed to flex down to derive the minimum flexible rate.
 - b. The minimum term for flexible rate tariffs between Peoples and its customers shall be one year.
 - c. The Peoples flexible rate tariffs shall include a default rate which is equal to the maximum rate as set out in Paragraph One (a) above.
 - d. Clarifying language proposed by the Department and specified in the body of this Order shall be added to Peoples' flexible rate tariffs.
2. Within one year of the date of this Order, Peoples shall submit a revised flexible rate tariff which clearly and accurately states the terms of the tariff.

3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)